

## REPLY COMMENTS:

Concerning Office of Retail Market Developments Request for Comments August 28, 2008- Illinois Commerce Commission

TO: Torsten Clausen, Christy Pound and Joseph Fallah and all SB 1299 Workshop Participants and other Interested Parties

FROM: Pepco Energy Services, Inc.

Date: October 29, 2008

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On August 28, 2008, the Office of Retail Market Development (ORMD) of the Illinois Commerce Commission sent out a Request for Comments from all SB 1299 workshop participants and interested parties. The ORMD stated in its Request for Comments that it was “taking a fresh look at existing requirements for providers of retail electricity services in Illinois and was looking for input from interested parties.” On October 6, 2008, the following parties filed Initial Comments: Commonwealth Edison Company (Com Ed); Direct Energy Services (Direct); Ameren Illinois Utilities (Ameren); Blue Star Energy (Blue Star) Dominion Retail (Dominion), Integrys Energy Services, Inc. (Integrys); MX Energy; Consumer Utility Board (CUB); Exelon Energy, (Exelon); U.S. Energy Savings Corp. (U.S. Energy Savings); and Constellation New Energy (Constellation).

Pepco Energy Services, Inc. (PES) did not file Initial Comments and appreciates the opportunity to file Reply Comments. Pepco Energy Services, Inc. is a licensed supplier of both electricity and natural gas in Illinois and is currently supplying retail competitive electric supply to large commercial and industrial customers in Illinois. PES is currently licensed to provide retail electric supply in twelve states and the District of Columbia. This broad retail electric supply sales footprint provides PES with a unique perspective on the operation of the competitive retail market for electric supply. Since PES does not serve residential customers, it has only replied to comments that were specific to the small commercial and industrial class.<sup>1</sup>

Pepco Energy Services’ business model is built on the belief that industrial and commercial customers benefit when customer choice is offered in a fair, understandable, and market neutral fashion. Well designed competitive markets offer a value to customers. Uniform statewide business rules<sup>2</sup> in Illinois that would allow marketers to enter the market in the position

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<sup>1</sup> The Initial Comments filed by the participants in SB 1299 Workshop all addressed the benefits of retail choice. PES is filing only limited Reply Comments on specific issues that impact the effective and anticipated vibrancy of the new small commercial and industrial choice process.

<sup>2</sup> During the Workshop Process, uniform rules for enrollment, drops, transmission of information from retail electric suppliers to distribution companies and from distribution companies to retail electric suppliers should be recommended to the ICC. This would mean that a barrier to entry for suppliers would no longer exist. Marketers contemplating entering the mass market residential and small commercial and industrial market in Illinois now may be dissuaded from committing resources to a new jurisdiction if it has to program specific operational protocols and procedures to interact with each Illinois distribution company. PES agrees with Mid-American’s Initial Comments at page 4 where it advocated establishment of uniform business rules, such as uniform discount rates for POR, uniform rescission periods, and consistent EDI fields for all distribution companies. In Maryland, within Rule Making 17, competitive electric supply business rules, the Maryland Public Service Commission ordered implementation of uniform statewide regulations concerning EDI and, transfer of service.

of not having to create back room operational protocols for each Illinois distribution company would help create robust competition in the competitive electric supply business. Customer choice, if it reflects what has happened in the larger commercial and industrial customer market, will give customers more control over their energy use and access to creative and innovative new product offerings. The more entrants into the marketplace allows the opportunity for price competition and a varied set of products that meet the consumers needs; such as offers that recognize either the customer's desire to diminish volatility in monthly pricing versus those that would rather shift some of the risk onto their company so that they can receive a possible lower price offer on electric supply.<sup>3</sup> PES does not serve the residential mass market. However, it is acutely interested in developing the small commercial and industrial retail electric market in Illinois. PES chose to not file Initial Comments because many of the initial inquiries directly affected the residential mass market. However, after reviewing all the Initial Comments filed by the participants in SB 1299 Workshop, certain themes evolved to which PES must respond.

**1. Retail Choice and referral programs are not necessary for small commercial and industrial customers if the retail choice market place is properly structured.** PES disagrees with the unduly implicit assumption in most parties' Initial Comments that referral programs are the best manner to spur retail competition for small commercial and industrial customers. MidAmerican, at page 6 of its Initial Comments recommended that the Commission consider retail choice and referral programs be limited to the residential market. Pepco Energy Services agrees. Instead, price signals for small commercial and industrial customers need to be amended to reflect true market prices Referral programs would not be necessary if the retail market design in Illinois with regard to electric supply was designed from a real market price perspective.

PES agrees with U.S. Energy Savings on page 1 of their Initial Comments that the retail market design in Illinois is not an ideal structure to foster retail competition for small commercial and industrial customers because those customers have access to a utility default price option whose rate is derived from long term physical contracts that were procured through the Illinois Auction. The Illinois Power Agency's future procurement plans encompass continued availability of a default service option backed by long term procurements. Retail electric suppliers can not compete with this product. Instead of referral programs or other retail choice embellishments, a utility default price that reflected the monthly price for electric supply would go the furthest to jump starting the retail competitive electric market in Illinois.

A default rate that reflected the market price for electric supply would be the proper price signal that consumers could use to compare that rate with the prices that electric marketers are offering in the retail market. Some jurisdictions have supplemented the utility default rate with a retail adder because they found it was the best way to encourage interest in the competitive market. Consumers are able to compare the utility's default rate which included a margin for profit with retail electric marketers' products. This allows consumers to make a real comparison of products that are priced on true market constructs. Referral programs that require retail marketers to offer electric supply at a discount would not even be a discussion item.

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<sup>3</sup> Some customers prefer a full requirements contract while others would rather only incur a specific charge if it becomes effective during the contract period.

However, with below market default service guaranteed to small commercial and industrial customers with long term forward procurements, referral programs to spur migration of small commercial and industrial customer to retail electric suppliers is a necessary component of any retail choice program. The statute describes three possible scenarios for the design of retail choice and referral programs. PES disagrees with Blue Star at page 2 of their Initial Comments that the third option, wherein a customer who contacts a utility and exhibits interest in migrating is transferred to a program representative, is the best program design for a referral program. A referral program that is easy to understand and easy to communicate is the optimal referral plan. However, a more importantly, a properly structured retail market is the real goal to attract small commercial and industrial customers to migrate to retail marketers for their electric supply. A retail electric market without proper price signals for customers is doomed to failure.

**2. There are specific consumer protection, disclosure, and terms and condition requirements that are necessary for residential customers only.**

- **Uniform disclosure requirements are not necessary for the small commercial and industrial market.** MXenergy at 6 of their Initial Comments supports the adoption of uniform disclosure requirements that allow consumers to compare prices, term and conditions and discourage marketers from purposefully failing to prominently disclose certain adverse features of their contracts. PES contends this requirement is inappropriate for the small commercial and commercial customer class. PES agrees with Constellation that a Uniform Disclosure Form is better suited as a requirement for the residential as opposed to the small commercial and industrial class. As Dominion discussed in their Initial Comments at page 12, small commercial and industrial customers are more sophisticated and require less “hand holding.” Public disclosure of complaints and complaint number by Retail Electric Suppliers on a monthly basis, as CUB suggests on page three of their comments is also not an appropriate requirement for marketers that only serve commercial and industrial customers. It is burdensome, costly and repetitive of work already done by ICC.
- **The planned ICC website should not display information for small commercial and industrial customers.** PES disagrees with Ameren’s Initial Comments at page 8-9 and Integrys at page 6 of their Initial Comments where it endorses the proposition that the planned website should include display information for both residential and small commercial customers since that is the “thrust of the initial mass market campaign”. PES agrees that the thrust of the initial mass market should allow comparison of offers for residential customers but the possible complexity, innovation and sophistication of small commercial and industrial offers do not make disclosure of each of these offers on the website feasible or pragmatic. However, PES appreciates Ameren’s final comment concerning website price disclosure that “it will defer to opinions of other stakeholders on this issue.

PES agrees with Direct Energy (at page 8) that displaying small commercial offers on the planned website depends on the complexity of the small commercial and industrial offers. Small and industrial customer offers can, as Blue Star noted on page 6 of their Comments be “idiosyncratic” in nature. Since customer choice is synonymous with multiple offers that reflect the diversity of the client’s needs, different offers, tailored to the specific customer will occur. It would be very difficult to try and outline these different offerings on a website without disclosing proprietary, competitive information. As Dominion Retail noted at page 11 of their Comments, commercial offers are more sophisticated and do not require the additional information site, that the ICC will provide for residential customers, so that they can compare prices and terms and conditions.